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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,878	03/06/2002	Michael R. Schramm		2526

7590

10/28/2003

Michael R. Schramm
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Perry, UT 84302

EXAMINER

LAMB, BRENDA A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092 828 Schramm

Applicant(s)

Examiner

LAMB

Group Art Unit

1734

---The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address---

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-20 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, drawn to apparatus/kit, classified in class 118, subclass 26.
 - II. Claims 18-20, drawn to process for coloring a colorable work piece, classified in class 426, subclass 250.

The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus/kit as claimed can be used to practice another and materially different process such as one for cleaning since the claims can be read on a apparatus/kit having the combination of the container with a single article such as a brush which can obviously be used for cleaning.

If applicant elects Group I (apparatus) then applicant will be required to make a specie election.

Claims 1-17 of Group I are drawn to a kit wherein the article in the kit is generic to a plurality of disclosed patentably distinct species comprising the following :

Species #1 -at least one colorable non-utensil work piece-edible;

Specie #2 - at least one colorable non-utensil work piece-non-edible;

Specie #3 - a utensil; and

Specie #4 - a discrete unit of colorable concentrate.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Note if applicant elects Specie # 3 (utensil) of Group I from the above cited list of articles then applicant is required to further elect one of the following subspecies of utensils:

Specie #3a – brush;

Specie #3b – spoon;

Specie #3c – a wire egg dipper;

Specie #3d – a pair of tongs;

Specie #3e – a straw.

If applicant elects Group II (method) then applicant will be required to make a specie election.

Claims 18-20 of Group II are drawn to a method of coloring a colorable workpiece wherein the colorable workpiece is generic to a plurality of disclosed patentably distinct species comprising colorable workpiece-edible and colorable workpiece-non-edible. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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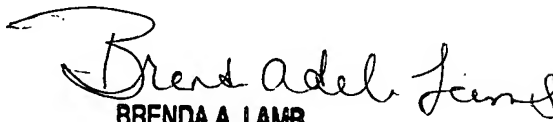
Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication should be directed to Brenda Lamb at telephone number 703-308-2056. The examiner can be normally contacted on Monday and Wednesday through Friday with alternate Tuesdays off.

B. Lamb/lap

October 14, 2003


BRENDA A. LAMB
PRIMARY EXAMINER
